

# WISCONSIN DEPARTMENT OF REGULATION & LICENSING



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STATE OF WISCONSIN  
BEFORE THE SOCIAL WORKER SECTION  
EXAMINING BOARD OF SOCIAL WORKERS  
MARRIAGE AND FAMILY THERAPISTS AND PROFESSIONAL COUNSELORS

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IN THE MATTER OF THE DISCIPLINARY  
PROCEEDINGS AGAINST

MARY JO KEARLEY, CSW,  
  
RESPONDENT.

Case No.: LS9909211SOC

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FINAL DECISION AND ORDER  
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The parties to this action for the purposes of Wis. Stats. §227.53 are:

*Mary Jo Kearley, CSW  
521 E. Jefferson St.  
Waupun, WI 53963*

*Social Worker Section  
Examining Board of Social Workers,  
Marriage and Family Therapists and Professional Counselors  
PO Box 8935  
Madison, WI 53708-8935*

*Department of Regulation and Licensing  
Division of Enforcement  
PO Box 8935  
Madison, WI 53708-8935*

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision in this matter, subject to the approval of the Social Worker Section. The Section has reviewed this Stipulation and considers it acceptable.

Accordingly, the Section in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Mary Jo Kearley (f/k/a Paschke), Respondent, date of birth February 3, 1959, is currently certified and registered as a social worker in the State of Wisconsin, pursuant to certificate number 2199, which was first granted on November 24, 1993.
2. Respondent's last address reported to the Department of Regulation and Licensing is 521 E. Jefferson St., Waupun, WI 53963.
4. Respondent was employed as a social worker at Christian Home / Christian Living Center (CHCLC), a nursing

home in Waupun, Wisconsin, from February 5, 1996 until she resigned on October 8, 1997.

5. Respondent's job duties at CHCLC, included coordinating the social services, reviewing the social needs of residents, and making referrals. The referrals included, if necessary, referrals for guardianship proceedings. [Wis. Adm. Code § HFS 132.68] Respondent was responsible for maintaining residents' social service assessments and social service care plans.

#### COUNT I

6. On November 5, 1991, Mr. A, a resident at CHCLA, signed a power of attorney for health care naming his wife, Mrs. A, as primary health care agent and another woman as alternate health care agent. This durable power of attorney was in Mr. A's record at CHCLA during 1997.

7. Mr. A's record at CHCLA also included a Statement of Patient Incapacity dated October 20, 1995, signed by two physicians, which says:

"I have personally examined [Mr. A] and in my opinion, he/she is incapacitated to receive and evaluate information effectively or communicate decisions to such an extent that he/she lacks capacity to manage health care decisions.

Health decisions means informed decisions in which this individual exercises his/her right to accept, maintain, discontinue or refuse any care, treatment, service or procedure to maintain diagnosis, or treat his/her physical or mental condition."

8. Respondent noted on a Folstein Mini Mental State Exam dated January 7, 1997 in Mr. A's record at CHCLA that Mr. A was unable to answer the exam questions due to aphasia (The loss of the power of expression by speech, writing, or signs or of comprehending spoken or written language due to injury or disease of the brain centers.)

9. Monthly summaries dated February 19, 1997, March 19, 1997, April 19, 1997, and May 21, 1997, which were completed by registered nurses and contained in Mr. A's record at CHCLA indicate that Mr. A was completely dependent on staff.

10.. Respondent's progress note, dated April 4, 1997, in Mr. A's record at CHCLA states that Mr. A is completely staff dependent and non-verbal, but makes eye contact at times.

11. The Activity Director's note, dated April 10, 1997, in Mr. A's record at CHCLA states that it is difficult to determine what Mr. A does or does not comprehend. The note indicates that all Activities of Daily Living are done for Mr. A and there is generally no response from Mr. A although at times there is a little eye contact.

12. Mr. A's mental capacity had not improved from 1995 to April 1997.

13. A person must be mentally competent and not incapacitated in order to legally execute a health care power of attorney.

14. A health care power of attorney allows the health care agent to make health care decisions for the person when, due to incapacity, the person is no longer able to make health care decisions for the person's self.

15. A person can not, at the same time, be competent to execute a health care power of attorney and incapacitated from making health care decisions.

16. In April, 1997, Mrs. A had a health care power of attorney form and asked Respondent where on the form to change Mr. A's alternate health care agent. Although Respondent knew, or should have known, that Mr. A was incompetent to execute a health care power of attorney, Respondent showed Ms. A where to make that change.

17. Mrs. A brought to CHCLA, a health care power of attorney, purportedly executed by Mr. A on April 19, 1997, which made Mr. A's son the alternate health care agent. The signature which purports to be Mr. A's is obviously not his signature, and Respondent knew or should have known that it was not Mr. A's signature.

18. Respondent's note dated April 22, 1997 in Mr. A's record at CHCLA states:

"[Mrs. A] did bring in new POA papers recently for [Mr. A] – new form has son listed as alternate health care agent should anything happen to deem necessary. Original placed in chart and incapacitated sheet attached."

19. Respondent knew, or should have known, that it was inappropriate for Respondent to place in Mr. A's record at CHCLA a health care power of attorney, executed at a time when Mr. A was not mentally competent to make that decision, and attach to it a document indicating that Mr. A was mentally incapacitated, which activates a valid health care power of attorney.

## COUNT II

20. On April 12, 1989, Mrs. B, executed a durable power of attorney, giving her daughter and her son-in-law immediate power of attorney over her property and power of attorney over Mrs. B's health care decisions when she was no longer able to make her own health care decisions.
21. On August 1, 1992, Mrs. B was admitted as a resident at CHCLC and a copy of the April 12, 1989 durable power of attorney was placed in her record at CHCLC.
22. In August, 1997, Mrs. B's daughter was diagnosed with terminal cancer.
23. Respondent's progress note, dated September 4, 1997, in Mrs. B's record at CHCLA states:
- "[Ms. C], granddaughter, called stating she was going to start process of a POA with pt. being found incapacitated at the same time. I told [Ms. C] I would get incapacity papers in Dr. Tu's box right away and informed her about out procedure and how we consider it effective . . . Names are going to be changed on DPOA that currently exists since Mrs. B is able to understand what information granddaughters can provide and then incapacity is going to 'hopefully be addressed' per [Ms. C]."
24. On September 4, 1997, Mrs. B did execute a power of attorney for health care naming her granddaughter, Ms. C, agent and another granddaughter, Ms. D, alternate agent.
25. On September 4, 1997, Respondent put a form for statement of incapacity regarding Mrs. B, in Dr. Tu's mail box at CHCLA, with the intention that it would be signed by two physicians declaring Mrs. B incapacitated from making health care decisions.
26. A person must be mentally competent and not incapacitated in order to legally execute a health care power of attorney.
27. A health care power of attorney allows the health care agent to make health care decisions for the person when, due to incapacity, the person is no longer able to make health care decisions for the person's self.
28. A person can not, at the same time, be competent to execute a health care power of attorney and incapacitated from making health care decisions.
29. Respondent's progress note, dated September 8 1997, in Mrs. B's record at CHCLA states that: "Received DPOA papers today. [Ms. C] had them redone and [Mrs. B] did sign them."
30. On September 30, 1997, Respondent reminded Dr. Tu that the statement of incapacity form regarding Mrs. B had not been signed and faxed the form to Dr. Tu. One physician signed the form on September 30, 1997 and a second physician signed it on October 2, 1997. The form, which was placed in Mrs. B's record at CHCLA says:
- "I have personally examined [Mrs. B] and in my opinion, he/she is incapacitated to receive and evaluate information effectively or communicate decisions to such an extent that he/she lacks capacity to manage health care decisions.
- Health decisions means informed decisions in which this individual exercises his/her right to accept, maintain, discontinue or refuse any care, treatment, service or procedure to maintain diagnosis, or treat his/her physical or mental condition."
31. Respondent's note dated October 3, 1997 in Mrs. B's record at CHCLA states:
- "POAHC papers have been updated. Mrs. B has been found incapacitated and decisions regarding her health and safety are to be determined by family now as she can no longer make her own decisions."
32. Mrs. B's mental condition did not change between September 4, 1997 and September 30, 1997.
33. Respondent knew, or should have known, that Respondent should not have placed a newly executed health care power of attorney in Mrs. B's record at CHCLA, while at the same time facilitating obtaining a statement from physicians that Mrs. B was mentally incapacitated.
34. The administrator of CHCLC notified Mrs. B's relatives that CHCLC would not honor Mrs. B's health care power of attorney signed in September because Mrs. B was not competent when she signed it.
35. On October 30, 1997, Mrs. B's family requested help from CHCLA in obtaining a guardianship over Mrs. B and on December 12, 1997 the court ordered the guardianship naming Ms. C guardian of Mrs. B's person and Ms. D guardian of Mrs. B's estate.

## CONCLUSIONS OF LAW

1. The Social Worker Section of the Wisconsin Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors has jurisdiction over this matter pursuant to §457.26(2), Stats.
2. The Social Worker Section of the Wisconsin Examining Board of Social Workers, Marriage and Family Therapists and Professional Counselors has authority to enter into this stipulated resolution pursuant to §227.44(5), Stats.
3. Respondent's conduct, as set out in Count I and in Count II above, constitutes a violation of Wis. Adm. Code §SFC 20.02(22) and subjects Respondent to discipline pursuant to §457.26(2)(f), Stats.

ORDER

1. Respondent shall satisfactorily complete "Respecting Your Choices", a two day comprehensive advance directive education program offered by Franciscan Skemp Healthcare in La Crosse, Wisconsin on September 16 and 23, 1999.
2. If Respondent is unable to complete the course on September 16 and 23, 1999 because of illness or other circumstances acceptable to the Section, or its designee, Respondent shall satisfactorily complete the same course when offered November 11 and 18, 1999.
3. If Respondent is also unable to complete the course on November 11 and 18, 1999 because of illness or other circumstances acceptable to the Section, or its designee, Respondent shall, within six months of the date of this order, satisfactorily complete a course of similar length and content, which shall first be approved by the Section or its designee.
4. Within 30 days of completion of the ordered education, Respondent shall provide proof sufficient to the Section of satisfactory completion.
5. Requests to take a program other than the one specified in paragraph 1 along with supporting documentation, and evidence of completion of an ordered educational program shall be mailed or delivered to:

Department Monitor

Department of Regulation And Licensing

Division of Enforcement

1400 East Washington Ave.

P.O. Box 8935

Madison, WI 53708-8935

6. Respondent shall bear all costs incurred as a result of satisfying this Order.

The rights of a party aggrieved by this Decision to petition the Section for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information".

Dated at Madison, Wisconsin this 21st day of September, 1999.

Cornelia Gordon-Hempe

Chairperson

Social Worker Section